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In re Application of
Cherchali et al.
Application No. 09/966,492
Filed: September 28, 2001
Attorney Docket No. 2000-0219

OFFICE OF PETITIONS

ON PETITION

This is a decision on the petition, filed January 21, 2009, under 37 CFR 1.183 to waive 37 CFR 1.131 to the extent that it requires that all of the named inventors execute the declaration filed thereunder.

The petition is granted to the extent *infra*.

Petitioners assert that, while all of the named inventors contributed to the conception of the claimed invention which is under rejection, inventor Steven M. Michelson has not agreed to execute the attached declaration under 37 CFR 1.131 in support of establishing conception of the claimed invention prior to November 28, 2000.

As noted in MPEP 715.04, an adequate showing may lead to acceptance of a declaration under 37 CFR 1.131 executed by less than all the named inventors of the claimed subject matter in question.¹ Under the facts presented, it is agreed that justice requires waiver of the rules to the extent that they require Steven M. Michelson to declare. However, the favorable decision herein does not relieve applicants from their burden to establish that the invention was completed before the date of the reference and that the claimed invention was the product of the joint inventors. See In re Carlson, 79 F.2d. 900, 27 USPQ 400 (CCPA 1935).

This application is being referred to Technology Center AU 2419 for further examination on the merits.

Also, the address given on the petition differs from the address of record. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

¹ If a petition under 37 CFR 1.47 was granted or the application was accepted under 37 CFR 1.42 or 1.43, the affidavit or declaration may be signed by the 37 CFR 1.47 applicant or the legal representative, where appropriate. See MPEP 715.04(C).

Inquiries regarding this communication may be directed to the undersigned at (571) 272-6692. Inquiries concerning the examination or status of the application should be directed to the Technology Center.

A handwritten signature in cursive script, appearing to read "Christopher Bottorff".

Christopher Bottorff
Petitions Examiner
Office of Petitions

cc: Wall & Tong, L.L.P.
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